

FIFTEEN YEARS AT HARD LABOR

Slayer Of Lorbeer Gets A Light Sentence.

IS FOUND GUILTY OF MANSLAUGHTER

Jury Was Out But a Little Over an Hour—Case May be Appealed.

(From Saturday's Advertiser.)

Samuel Barney, who killed John W. Lorbeer at the Oahu Railroad depot on Sunday morning, August 12, was found guilty of manslaughter in the first degree by the jury which has been hearing his case for the past two days, and he was sentenced by Judge Silliman to serve fifteen years in the Oahu penitentiary.

It took the jury a trifle over an hour to reach the verdict. The case went to them at 8:40 last evening, and a few moments after 9:40 they returned with a verdict of manslaughter in the first degree without recommendation. Attorney Andrews, counsel for Barney, immediately moved for a new trial, but the motion was quickly denied, and Judge Silliman proceeded at once with the sentence. He asked a few questions of Barney as to his birthplace, ascertaining that he was a single man and had only some brothers and sisters in his native State, Oregon. Attorney General Dole asked for the full penalty, but the Attorney Andrews pleaded for a short sentence. The Judge then sentenced Barney to serve fifteen years in Oahu penitentiary at hard labor.

From the opening of court in the morning, the case went rapidly, and it soon became evident that the day might completely close it. Andrews started the morning by a mild protest against permitting the newspapers printing the news of the trial with comments on the relevancy and effect of the testimony, but Judge Silliman reminded him that Hawaii was a free country, and that newspapers had a right to print the news, and that he could not prevent it.

"But if your honor would make an order requiring the papers to print the news of the trial without commenting on it, it would be sufficient," Mr. Andrews urged pleadingly.

"I think that is the province of the court," Judge Silliman replied. "The papers ought to refrain from commenting on the news and I will ask the reporters to keep their reports as free from comment as possible."

The day went rather better for Barney on the second day. George Dodds, Barney's star witness, and he proved one of the most convincing that had appeared on the stand. He was quite self-possessed, and told a story that was not materially shaken by cross-examination. Barney himself appeared on the stand and told a carefully prepared story of the crime, in which he attempted to prove that he had been in such danger of his life that he had fired at Lorbeer to protect himself. The evidence on the score of self defense was not very conclusive. The setting of a ring was found in Barney's clothing after his arrest. This, it was stated, had been in a ring worn by Lorbeer, although it was not proved to have been his. Barney said that when Lorbeer hit him he thought he had been stabbed and he drew his gun to protect himself. The ring setting was a small piece of smooth agate and could scarcely have done any one much harm.

Shortly before 5 o'clock the defense rested, and then there was a wrangle over the admission of instructions, and it was agreed to postpone the arguments until evening. Something over an hour was consumed in the arguments, and at 8:40 o'clock the jury retired to consider the case.

SAW BARNEY SHOOT.

Walter M. Hughes, an engineer of the Oahu Railroad Company, was the first witness of the morning. From the roundhouse, where he had stabled his engine, he saw the events leading up to the shooting.

"Lorbeer was on the rear end of a train backing down the track," he said. "Lorbeer reached out and shoved Barney out of the way of the car. Then Lorbeer made a warning gesture at Barney. Barney, in stepping back, reached for a revolver, and Lorbeer, seeing the movement, made a jump for him. He seized Barney and then the gun was used. He leaped back and said, 'You've got me,' he started again for Barney and there was another shot. Lorbeer went at Barney again and knocked him down and held him with one hand, keeping him from using the revolver again."

On the map which had been prepared of the scene of the shooting, Hughes located the position of the two parties most interested, and himself. He said that he had gone to the aid of Lorbeer as soon as he could collect his senses, and then accompanied Lorbeer to the hospital.

HUGHES CROSS-EXAMINED.

On the exact location of the two men when the shooting took place, Hughes' testimony differed somewhat from Kapple's, on cross-examination Hughes stating that the two were farther apart than had Kapple.

Then Mr. Andrews went to him on the question of the blows said to have been interchanged. Hughes considered that Lorbeer had pushed Barney away from the moving car. He was quite sure that Lorbeer had pushed Barney with his open hand, and did not strike him with closed fist.

His version of the situation when the first shot was fired differed somewhat from that of other witnesses. He stated that the revolver and had jumped toward him so that the two were half grappled when the revolver exploded.

FIREMAN YATES TESTIFIES.

John P. Yates, a fireman on the railroad, was summoned by the native boy Hopoli to the scene of the shooting, and when he reached there Barney was on

his back on the ground, with Lorbeer on top of him. He assisted in disarming Barney, and took possession of the revolver.

A new blue-steel Smith & Wesson revolver was produced, and this Yates identified as the one which Barney had used. Yates testified that he gave the revolver subsequently to Master Mechanic Murray. The witness was excused with but little cross-examination, entirely as to the relative strength of Lorbeer and Barney.

Thomas Murray, the master mechanic of the road, said he did not reach the scene until after the shooting, when he found Lorbeer lying on the ground, and Barney standing near by with a crowd about him. He obtained the revolver which Barney had used, and afterwards gave it over to the care of the police.

"Did you hear Lorbeer say anything after you arrived?" asked Mr. Cathcart.

"He said something, but in such a low tone of voice that I could not understand him."

WHAT BARNEY SAID.

Lester Petrie, an engineer on the Oahu railroad, was standing in front of the depot when Hughes shouted to him to come down, for Lorbeer was shot.

"What was the state of affairs when you reached the scene?" asked Mr. Cathcart.

"Lorbeer was half lying on the ground," said Petrie. "Barney stood near by. I saw Yates with a revolver, and I asked what had been done. Yates said, 'Barney shot Lorbeer.' Then I turned to Barney and asked him why he did this, and he said: 'I told him to keep away from me.' I sat down beside Lorbeer then and took his head in my lap to keep it out of the cinders. I asked him what had happened, and Lorbeer said very low and thick, for he was very weak: 'Barney shot me.'"

Petrie went on to tell of the removal of Barney and Lorbeer from the scene, and the arrest of Barney. He was subjected to little cross-examination.

Jaime Jose, an engineer on the Oahu railroad, saw Barney and Young Cabral in the cab of his engine at the water tank.

"I heard Barney say to Cabral," said Jose. "Why didn't you get out of the way? You were in the way. I have nothing to do with you."

This testimony was vigorously objected to by Mr. Andrews, and as Jose knew nothing further of the case, he was excused.

Louis Brown testified that he was a fireman employed by the railroad.

SAID 'HE'D FIX HIM.'

"I first met Barney Muring plague times," said he, "and we were both employed at the Fulton camp. Afterwards, we both became employees of the railroad company."

"Did you have any conversation with Barney about Lorbeer before the shooting?" asked Cathcart.

"Yes, he told me one day, Friday, I think, before the shooting, that he had some trouble with Johnnie. I asked him what it was. He said that Lorbeer said he did not know anything about railroading, and he had railroaded in the States, and if Lorbeer said anything like that to him again he'd 'fix him.'"

A few evenings before that I was out with a man named Toms, and we saw Barney and he was pretty drunk. We took him home and put him in the car where he slept. I saw his revolver that evening, and asked him what he was going to do with it. He said he had it for his own use."

"The only time you were in Barney's car was after you took him home?" asked Mr. Andrews, cross-examining.

"That was the only time."

"Did you have any difficulty about getting him home?"

"He came willingly."

"Oh, yes."

"What were your movements after you left the saloon where you met him?"

"We got into a hack with two others and went out to Twelfth street."

"Oh, you went first to Twelfth, did you, on your way home with Barney?"

"We did."

"Were your companions drunk?"

"No; not at all, except Barney; he was."

"So drunk that you thought you'd better take him home?"

"We thought he'd get into trouble with the company if we left him there."

"Now, about this Wednesday conversation, that was a simple casual conversation when he said he'd 'fix Lorbeer'?"

"Yes; I'd forgotten about it until I heard of the shooting, but I remembered it then right away."

DAMAGING TESTIMONY.

Fred Toms heard the Wednesday morning conversation in which Barney spoke of Lorbeer.

"Relate that conversation," directed Mr. Cathcart.

"I was in the yard of the railroad when Barney came along and said he'd had a row with Johnnie and he was going to 'fix him.'"

"Did you think he was going to kill Lorbeer?" asked Mr. Andrews.

"No; I thought he meant he was going to have a fight with Lorbeer."

"And you wouldn't have thought of it again unless this matter had come up?"

"No, probably not."

Yin Sui, a Chinese known as Ah Kai, a cook on the railroad car where Lorbeer had lived, told of seeing Barney's revolver a couple of times. Barney had it as he lay in bed, and was playing with the trigger.

"The last time I saw him with it was Sunday morning, August 12th," said he through the interpreter. "He was pressing the trigger as though to try it."

"Where did he keep it," asked Mr. Andrews, on cross-examination.

"I don't know."

HOLI ARRESTED BARNEY.

Capt. Holl Thompson of the police department told of arresting the defendant and receiving the revolver from him. There were three loaded shells and two unloaded ones in it. The revolver and shells were received in evidence.

"When Barney was searched at the police station we found the setting of a ring in his shirt pocket," he said under cross-examination.

"Mr. Barney tells me that there was no pocket in his shirt," said Mr. Andrews.

"Well, it came from his shirt, anyway. I don't know for certain about the pocket. He told me that that was not his, but it belonged to the 'other fellow.'"

This ring had been referred to tentatively by Mr. Andrews on several prior occasions. The materiality of the mat-

terially was which in the State was being a real ring. None of them had remembered seeing one.

Dr. Wood described the appearance of Lorbeer, and the operation following the shooting. The wounds in the stomach, he stated, that he had stitched up a large number of holes in the large intestine. The intestines were cut very badly, and found a hole into the kidney which was stopped. Lorbeer was so weak by this time that he could not stand much more, and the abdominal cavity was immediately closed, and stitched up. Lorbeer lived but fifteen minutes longer. Dr. Wood also described the finding of the fatal bullet during the post-mortem examination.

"Were either of the wounds you found on Lorbeer's body necessarily fatal?" asked Mr. Cathcart.

"I found two more wounds in the intestines, two in the stomach, and the kidney was very badly lacerated and torn. Judging from my examination I can state that death was due to these wounds. The wounds in the stomach and kidney I consider mortal wounds under any condition."

"From the appearance of the wounds would you say that the revolver was held close to the body?" asked Mr. Andrews.

"From the powder stains I should say that the revolver was held close, say at arm's length or less."

With Dr. Wood's testimony the prosecution rested.

DEFENSE'S STATEMENT.

Attorney Thompson gave the statement for the defense. He told of the controversy with Cabral on the engine in the progress of which Cabral used an opprobrious epithet. After that he went to the car where he lived and breakfasted with man named Dodd. Barney invited Dodd to go to the picnic with him, and together they examined Barney's revolver, and suggested that at the picnic they might do some shooting at a mark. Afterwards Barney went out and met Cabral; he struck him and the boy ran to Lorbeer. Lorbeer asked Barney what he had done to the boy and then struck Barney. He struck him not only once, but many times, dazing him and nearly knocking him over. Barney felt a sharp pain in the breast and thought he was stabbed. Lorbeer kept on striking him, and in defense of his life he drew his revolver and shot.

George Dodds, timekeeper at Kahuku plantation, told of his visit to Barney early on the morning of the shooting; that he breakfasted with Barney, and was invited to go to the picnic with him.

"Did you see Barney's pistol?" asked Mr. Andrews.

"Yes, we examined it, as it was a new kind, but I don't remember that anything was said about any use to which it was to be put that day."

"Did you go out with Mr. Barney afterwards?"

"Yes."

"Tell what you saw."

LORBER STRUCK BARNEY.

"There was a Portuguese standing out by the roundhouse and Barney went up to him and struck him. The Portuguese ran across the tracks and a train which was backing down came upon the man. A man was standing on the rear end and he reached down and struck him."

"On the body or the face?"

"In the face."

"With his open or clenched fist?"

"His fist was closed. Then the man jumped off and followed Barney, striking him one or two times in the back. Barney was backing away from him, and the other man, Lorbeer, it was followed him. Then I saw Barney reach for his gun and shoot. Lorbeer jumped on him; there was a second shot, and that was all I saw."

"You have no interest or bias in this case; you came simply because you were subpoenaed?"

"I did."

"Did you hear either one say anything after Lorbeer, as you say, struck Barney?" asked Mr. Cathcart, cross-examining.

"I heard someone say, 'You will, will you? But I could not say which it was that spoke.'"

"Was Barney standing on the track so that the car would have struck him if he had remained there?" asked Juror Templeton.

"I couldn't say, but I think not."

"Did Barney try to climb on the car?"

"I don't know about that."

HANNAHAN SAW MARKS.

Officer Hannahan was called.

"You examined Mr. Barney after he was arrested?" asked Mr. Andrews.

"I did."

"Did you see any marks on his body at that time?"

"I saw a number of marks as though from blows, and one mark on the temple."

"What were these marks like?"

"As though caused by something hard; small, not large. He must have been hit by something hard."

"This wound on the temple; was it fresh?" asked Juror Templeton.

"Yes, as though recently inflicted."

BARNEY ON THE STAND.

Then the defendant went on the stand to tell his own story to the jury.

"Your full name?"

"Samuel Barney."

"What kind of business?"

"Railroading."

"How long have you been in the employ of the Oahu Railway?"

"About six weeks."

"Prior to August 12th, had you any feeling against John W. Lorbeer?"

"No, I have never heard the statements made by Mr. Brown and Mr. Toms that you would 'fix' Mr. Lorbeer."

Barney had been talking in a scarcely audible tone, but he raised his voice at this and said decidedly: "I never did."

"What was the occasion of your buying that pistol?"

"I was told by Mr. Dennison shortly after I was employed by the company that I should be sent in a short time out to Makua, and that I should have charge there of a number of Japanese. I have had experience with Japanese before at Kahuku plantation, and I know what they are, and as Makua is rather a lonely region, I decided that I ought to get a revolver, so I got one."

Going on, Barney came to the events preceding the shooting; his meeting with Dodd, the invitation to breakfast and to go to Makua. He described the conversation over the revolver, going minutely into details of the plans for target shooting.

"Then Dodd and I went out and over toward the roundhouse. There I saw a Portuguese boy."

"You had had some trouble with him before?"

"Yes."

"What was its nature?"

"To tell the beginning, I had orders to go to the rock cut as quick as I could. I went to the wharf and got the cars necessary, and the engineer went to take water at the tank. Another engine was in the way, and I gave them a signal to get out of the way. As they passed me the Portuguese said, 'G—d— you, why didn't you go the other way.' In the first place, he had no occasion to speak to me at all, for it was

you and my trouble with him the morning of the shooting."

"After I got up I went by the engine where the Portuguese was working. I saw him and told him the next time he had anything to say, to come down on the ground. Then he climbed on the engine and I followed him. He had a wrench and he ordered me off the engine and I got off."

"Now, coming back to the time just before the shooting, tell us what happened?"

"I saw that Portuguese and I went up to him and slapped him. He ran across the tracks and shouted to Lorbeer, 'Johnnie, did you see that man hit me?' The train came backing down with Lorbeer on it, and as he nearly reached me, he said, 'What's the matter with you?' And I said, 'Nothing's the matter with me, Johnnie.'"

"Then what happened?" asked Mr. Andrews.

"As the car passed me I felt a glancing blow on the side of the neck. I wasn't thinking of Lorbeer's striking me, for he didn't have any reason to. I turned around and got another blow in the chest. I felt a sharp pain as though I had been stabbed. He was striking me with both fists then, and blows were coming thick and fast. I was half falling backwards and half-dazed by the blows, and I pulled my revolver, thinking that I was going to be rolled under the car, and I tried to save myself. He grabbed the gun then and I don't know how the other shot was fired. It was a double-action gun, and I may have pulled the trigger, or it may have gone off on account of his grabbing me. Then I fell backwards with Lorbeer on top of me. We struggled there for a minute, then Lorbeer called, 'Why don't some of you fellows help me?' Then others came and they took the gun away."

"When you were taken to the police station you were searched, were you not?"

"Yes."

"Mr. Andrews picked up the setting alleged to have been from Lorbeer's seal ring."

"Does this belong to you?" he asked.

"No," replied Barney.

"Where did you first see it?"

"It dropped from my clothing when I was searched."

"Had you any trouble with Lorbeer prior to the day of the shooting?" asked Mr. Cathcart.

"No; no more than a little friction. Nothing serious."

"Did you ever say to Brown or Dodd that you would 'fix' Lorbeer?"

"I never used any such expression about him in my life."

"Had you been drinking the morning of the shooting?" asked Juror Templeton.

"No, I had not drunk anything that morning."

"Where did you railroad before?" asked Juror Templeton.

"In the States."

"And it is the custom in the States for the railroads to provide their men with revolvers, is it not; especially on freight trains?"

"Yes, because of the tramps that they often meet with and have trouble with."

"You say you never had had any trouble with Lorbeer?" resumed Juror Templeton.

"How do you explain the fact that Lorbeer struck you?"

"I don't understand it at all, for he had no reason to, unless it was over the Portuguese boy."

"It is well for the jury to be careful in their questions," interposed Judge Silliman, just here, "for counsel do not like to object to any questions that may be asked."

"I am willing to answer any questions they may wish to ask me," said Barney, simply.

This was all, and Barney left the stand.

"We rest," announced Andrews.

FROM HONOLULU.

Another Report on Doan's Backache Kidney Pills.

If your poor back still aches, if you toss all night racked in pain, if you cannot bend over or straighten up,

Depend upon it, it's your kidneys. And kidney disorder rarely leaves of its own accord.

Doan's Backache Kidney Pills are a good kidney medicine.

They cure kidney complaints.

This is how they fulfilled it with a Honolulu citizen:

Mr. A. J. Cahill, of Fort street, this city, night watchman in the employ of Messrs. T. H. Davies & Co., Ltd., says:

"What a young man I was a sailor and at one time worked for the Inter Island service. I was, however, obliged to give up sea life on account of severe suffering from my back and kidneys. For this I had tried various remedies, but the one which restored me to health was Doan's Backache Kidney Pills—procured at Hollister's Drug Store. They relieved me completely after years of suffering. If any one desires further particulars he may apply to me. I can be found at Van Dorn's Ship Chandlery, Fort street."

You should get the same medicine which helped Mr. Cahill. See that the full name DOAN'S BACKACHE KIDNEY PILLS is on the wrapper and refuse any imitation.

Doan's Backache Kidney Pills are sold by all chemists and storekeepers at 50 cents per box, six boxes \$2.50, or will be mailed on receipt of price by the Hollister Drug Co., Honolulu, wholesale agents for the Hawaiian Islands.

WALDO J. A. CRACKERJACK.

Recently Arrived Horse Known in California as the White Ghost.

There will be no racing at the Kaplani track for the next two weeks on account of the 8th being boatrace and the 15th regatta day.

Mr. Rooker, the well known horseman, is in town; he expects to leave shortly for the Coast.

Waldo J. (208) who recently arrived, possesses a great record. He was known in California as the "White Ghost" and has defeated such good ones as W. W. Wood, Silkwood and Chehalis, in two notable races. In a race against the first two horses, Wood took the first heat in 2:07 1/2. Silkwood won the second heat in 2:08. Waldo J. took all the next three heats in under 2:09. In a match race with Chehalis (2:08) Chehalis took the first heat in 2:08. Waldo took the next three in 2:08, 2:09, 2:09. Chehalis was shut out in the last.

DISEASED MEAT SOLD

Citizens of Kauai Are Alarmed.

ASK FOR AN INSPECTOR

Traffic in Tuberculous Beef Will be Stopped on the Garden Isle at Once.

Tuberculous meat is being sold on the island of Kauai in such quantities that the residents of that island have risen in protest and demanded from the Board of Health a meat inspector to prevent the traffic. Heretofore the island has been without an inspector who had the power to condemn meat and prevent the sale of it where discovered.

The matter was brought before the Board at a meeting Saturday afternoon. A letter was received from residents of Hanalei, Kauai, in which it was stated that there were numbers of tuberculous cattle on the island and at present there was no method of inspection of them and as a consequence no restriction on the sale of the beef. A Chinese butcher was mentioned as one of those who was supposed to be slaughtering and selling beef which there was reason to believe was tuberculous and unless there was some means of inspecting the beef it would be impossible to stop its sale.

The Board considered the matter at some length and it was decided to appoint at once, Mr. H. H. Perry, of Hanalei, as meat inspector for the island, to serve without pay.

The sanitary condition of Relief Camp No. 1 was likewise considered by the Board. It was reported that for some time past the camp had been in bad condition. It is very crowded, the building being filled with people of all nationalities, and as a result the camp had been gradually growing worse until now it was a menace to the health of the district.

A resolution was introduced by Mr. Lowrey asking the Territorial Government to close the camp at once and this passed without opposition. It was as follows:

Resolved, That in consequence of the insanitary condition of Relief Camp No. 1 and the